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Neither Convention nor Constitution—What the Debate on Stem Cell Research Tells Us About the Status of the Common European Ethics

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I. INTRODUCTION

Stem cell research has been a point of controversy for years. On the one hand, it is associated for many with the hope of finding ways to treat previously incurable diseases; on the other hand, it is cause for rejection, concern, and anxiety, especially where it is perceived as overstepping the line. Stem cells are currently in high demand as objects of research because of their specific nature as "original cells", that is, possessing the ability to reproduce almost limitlessly and having the capability to become many different types of cells. Stem cells are to be found in the human organism at all stages of its development, and yet opinions diverge concerning their various suitability for research purposes.

There are six different harvesting techniques which entail particular methods of research, each raising a different set of ethical issues since not all types of harvesting imply the destruction of human embryos: 1) research on stem cells from umbilical cord blood; 2) research on adult stem cells; 3) research on stem cells from aborted embryos; 4) research on embryonic stem cells from surplus embryos after in-vitro fertilization (IVF) treatments; 5) Research on embryonic stem cells from embryos created especially for this purpose using IVF ("consumptive embryo research"); and 6) research on stem cell lines imported from abroad.

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Stem cell research is *globally* controversial. Debates are raging on this topic from North America to Europe, from Asia Minor to China and Japan (Kennedy Institute, 2004).

Although legal opinion concerning stem cell research's permissibility varies considerably from country to country and the obstacles facing researchers are as different as they possibly could be, it has become apparent that the new options opened up by stem cell research are perceived worldwide as a new way of dealing with human life (Meilaender, 2001; Meyer & Nelson, 2001). Philosophical and religious traditions are being consulted to ascertain whether this new stance can be justified or not. The reactions in East and West are manifold. Some brought up in the Western tradition have a major problem with this changing view of human existence, away from the subject of life and towards the object of research. This is exacerbated by the realization that artificial fertilization, or extracorporeal access to life-in-the-making, has led to the fundamental problems now underlying modern reproductive medicine and stem cell research, a situation which can no longer be reversed. Prenatal diagnostics (PND) continues to pose difficult issues to the present day (Krones & Richter, 2004).

Stem cell research is *nationally* controversial. Like many other biomedical topics, stem cell research divides society. But the issue it raises of "consumptive embryo research", that is, of whether life may be destroyed for the purposes of research, even divides individual groups: politicians, philosophers, scientists, theologians, patients, and families. Stem cell research touches the very core of our attitudes towards life and thus has a deeply symbolic significance.

This is an explanation for the hefty contradiction in Germany voiced by Hubert Markl (2001), the president of the famous Max Planck Society for the Advancement of Science, to a widely respected speech by German President Johannes Rau (2001), appealing that life not be objectified and the line not overstepped (for a more detailed analysis of this conflict, see Schmidt, 2003). Two years later, a statement delivered by the German Minister of Justice, Brigitte Zypries (2003), to the effect that an artificially fertilized egg cell, or an embryo in vitro, could not be perceived from a legal point of view as possessing human dignity, almost amounted to the breaking of a taboo. Although it was not new for the philosophical debate, the public outrage this statement provoked showed just how sensitive the issue of protecting human life-in-the-making is in Germany. If this sensitivity is hard to comprehend in other countries, then this only goes to prove just how differently these debates are pursued across the world.

II. EUROPE AS THE MOTHER OF MODERNITY

The stem cell debate in Europe is telling for many reasons. First, Europe can be seen as the "mother of modernity" (Sloterdijk, 2002, p. 27). Controversies and developments arising in North America, for example, are basically "European offshoots": the philosophical roots of such conflicts are often to be found in European traditions. Second, Europe is permeated by a search for peaceable solutions to conflicts and the moving experience of what it means to live together in tolerance. Centuries of (bellicose) conflict, culminating in the First and Second World Wars, are in the last 60 years being overcome through economic collaboration (European Union), attempts at joint regulation of bioethical issues in the *Convention on Human Rights and Biomedicine* (Council of Europe, 1997), and the passing of a common Constitution. However, none of these attempts is capable of masking the difficulties involved in finding and pronouncing a common European basis. On the contrary, arguments about the *Convention*, which have been raging for years, and the fact that even today some countries have yet to sign the Convention, elucidate the point that many agreements have only been possible in Europe through the conscious inclusion of linguistic ambiguities, in order to achieve a sufficiently large scope for interpretation (Delkeskamp, 2000).

Even attempts to define European identity by means of the common root of Christianity have ultimately failed, due to the fact that various governments within Europe could not agree to the inclusion of a reference to the Christian roots of the European continent in a joint Constitution. Even where this failure has been welcomed (Llosa, 2004), the view that these roots and traditions play an important role in bioethical decision-making is still largely respected. This is because religious traditions are far too formative to be ignored, despite the fact that the individual European countries differ considerably in the amount of influence the churches have, for example. Issues concerning the beginning and the end of life, from consumptive embryo research to euthanasia, raise key human questions which always involve one or more religious aspects.

In his speech at the awards ceremony for the Peace Prize by the German book trade, the philosopher Jürgen Habermas touched upon the issue of whether such questions can be addressed at all without regress to religious language. The notion of God and that of man being His creature in the Judeo-Christian tradition imply "an intuition which […] may even speak to those who are tone-deaf to religious connotations" (Habermas, 2003, p. 114). This must not be rejected out of hand as a philosophical reconstruction of Christian

ideas; far more, it expresses an European understanding of the world that human life rests on foundations it does not owe to itself (Wabel, 2004).

III. THE BOUNDARIES OF COMMON GROUND

The drawing up of the *Convention on Human Rights and Biomedicine*, with all its difficulties and ultimate outcome, has rendered many sceptical about a common European solution to bioethical issues (Schmidt, 2000). Too often compromises were sought, clarity avoided, and the individual countries left to decide how to implement the various stipulations at home. Stem cell research poses an additional problem in this context, however. What happens when a member state rejects stem cell research and prohibits it domestically, but the EU passes a *common* research project to be financed jointly by all member states, including those who have rejected it for their own countries? (Beckmann, 2004).

This number of *The Journal of Medicine and Philosophy* lays out the geography of the debate on stem cell research in Europe and shows why the disagreement between states and within states cannot be solved on the basis of a common solution due to what Hauskeller calls, in relation to Great Britain, "a complex set of previous political regulations which can only be understood by referring to the particular dominant style of ethical reasoning and political self-understanding" of that specific country (Hauskeller, 2004). This collection of essays also illustrates the attempts of individual European countries to regulate dealings with stem cell research and records the processes involved in the decisions taken. It reveals the extent to which country-specific arguments play a role within Europe and repeatedly encounters the issue of which role the state should play at all in the authorization or prohibition of research.

The first essay by Christine Hauskeller provides a detailed account of the presuppositions that define the British context, one of the most liberal in Europe as far as regulations on embryo research are concerned. The British situation is uniquely characterized by the high value given to certain individualistic principles (autonomy and choice). These principles are then translated in the socio-political discourse into efforts to support financially and scientifically the field of embryonic stem cells, with an eye to achieving leadership in the field and consequently to exercise influence on the ethical guidelines that could regulate research at the international level (Hauskeller,

2004). Hauskeller, however, is eager to point out that this project is doomed to fail since, in European standards (EU), there is not agreement as to the ontological and moral status of the embryo and the principles or concepts (i.e., respect, dignity, right to life, sanctity, etc.) that should guide bioethical reflections.

Howard J. Curzer, although examining the issue of stem cell research from the context of the United States, illustrates the complexity of the debate. His essay shows that the issue at stake is not about the right to use stem cells or the question of what would be the ethical way to use them, but about the kind of arguments that will determine why it is justified (or not justified, by the same token) harvesting embryonic stem cells and to show why these arguments succeed or fail. In his analysis, the ambiguity resides in the use of the language of embryos having the right to life.

The controversy over the status of the human embryo is the main focus of the third essay by Alexandre Mauron and Bernard Baertschi, who look at the debate on stem cell research in Switzerland. The main focus of their essay is a critique of a middle position concerning the status of the embryo called *the respect model*. This position assigns to the embryo "some form of intrinsic value that commands respect without preventing all forms of killing of early embryos" (Mauron & Baertschi, 2004). This means that the notions of respect and human dignity play a crucial role in the debate, and find their roots in the Kantian sense of dignity. This, the authors argue, by way of oversimplifications and misunderstandings, leads to the problematic notion of *embryological Kantianism* which is present in many official pronouncements and ethics commissions statements.

The problem of embryological Kantianism, according to Mauron and Baertschi, is that its core definitional value, that is, respect, is ambiguous at three levels: 1) What is the basis for respect? 2) What are the prohibitions imposed by respect? and 3) How much respect is owed to an early embryo and how to balance respect with the interests of patients? Although the notion of embryological Kantianism is reflected in many moral traditions in Europe, it needs, Mauron and Baertschi argue, to be critically examined in order to further the discussion of stem cell research because the arguments sustaining such a position do not support a "quasi-personal status of the embryo."

The essay by Giovanni Maio further demonstrates how the language of respect or dignity of the embryo is rather subject to many interpretations and is not free from ambiguities, as the French context shows. In 1994 the French parliament passed three bioethics laws, one of which guarantees the dignity of

the embryo except when parents grant permission to use embryos for medical purposes. As a general rule "artificial creation of embryo in vitro for research is prohibited" in France (Article L. 152-8 of the bioethics law of 1994). On the other hand, the status of the embryo is not clearly defined, although the language of respect for every human being from the beginning of his/her life is recognized (Maio, 2004). The ambiguity of the French position is even further demonstrated in how the National Ethics Commission, in 2000, revised the 1994 bioethics laws and encouraged a liberalization of research on supernumerary embryos (while rejecting the creation of embryos for research) due to potential therapeutic applications. The main premise for the liberalization of research was based on the concept of "virtual solidarity," which confers a higher moral status to the patients who might benefit from embryonic research than the embryos themselves. Maio's article shows that the notions of respect and dignity appeal to certain human intuitions present in the moral tradition of many European countries but do not allow for determining the ontological and moral status of the embryo.

The next two articles, by Jan Beckmann and by Tanja Krone and Gerd Richter, look at the discussion on stem cell research within the German context. One of the particularities of the German context is that, contrary to the British context, it has very strict laws regulating research on human embryos, while at the same time, under the Stem Cell Act of 2002, allowing under very specific conditions (high priority: enlargement of medical knowledge and gaining scientific knowledge for the sake of human beings; absence of alternative; Beckmann, 2004), the use of human embryonic stem cells for research.

Beckmann points out that the German Parliament debated the question of embryonic stem cell research in relation to three fundamental principles: 1) how to protect human dignity and 2) the right to life, and 3) how to secure freedom of research. Beckmann discusses the interplay of these three fundamental principles and argued that the debate ended up creating two main positions in Germany: the first maintains that human embryos are human beings and deserve full protection, while the other holds that a human embryo, before implantation, might only *become* a person and therefore a ranking of value and priorities may be established, allowing research under certain conditions. To avoid the impasse of the two conflicting positions, Beckmann argues for a modified first position in which early human embryos are considered to be human beings but are also subject to assessment. This position provides, in his view, an alternative to the two main positions. It separates "the right to

protection of life" from the notion of human dignity only insofar as high-priority research goals are established and consequently allows the use of supernumerary embryos for research.

The article by Krone and Richter examines the issues related to Preimplantation Genetic Diagnosis and addresses the interesting and crucially relevant set of issues PGD raises for the status of the embryo. In a study Krones and Richter conducted on reproductive behavior, they conclude that a plurality of views on the status of the embryo characterizes the public opinion, which is caused by "the difference in backgrounds, situations and attitudes and not by higher or lower levels of morality" (Krones & Richter, 2004). Consequently, and contrary to most opinions, they argues that the status of the embryo cannot be a "categorical norm" because there are other factors in ethical reflections that are crucial in the decision making process (parents and their relation towards their embryos should play a crucial role).

IV. THE FUNDAMENTAL STANDPOINTS

This collection of essays suggests that despite some variations (see, for instance, Beckmann (2004)) there are two main conflicting views about the moral and ontological status of the human embryo. Contrasting the two fundamental standpoints in the stem cell debate reveals two different views of human life and the protection of life (Schmidt, 2003).

Protection of life from the start

Human life is comprehended as inviolable from the start, from the moment of fusion between sperm and egg cell. It cannot become part of a calculation involving other values, goods or goals. Although this stance is a very old one, throughout the course of history the exact moment when human life is thought to start has increasingly been brought forward. One of the greatest influences in the Middle Ages in this respect was Aquinas, who propounded the Aristotelian notion that a human being only started to exist when God breathed a soul into it. The male embryo was said to receive its soul on the 40^{th} post-fertilization day, the female embryo on the 80^{th}. It was impossible for a human being to evolve purely "biologically", that is, without God's help. Later, medical research and especially the discovery of the female egg cell led to a rethinking regarding the moment when human life is said to begin, for modern embryology had revealed that nearly all the biological necessities for human development

already exist at the point of conception. The Catholic Church duly took up this discovery, and in 1869 Pope Pius IX decreed a "simultaneous giving of souls" to replace the prior "consecutive giving of souls": the soul is given to the embryo not a few weeks into its development but parallel to conception; from this point on the embryo is a *developing human being* deserving full protection.

Increasing levels of protection

Whereas the advocates of Position 1 consider a fertilized egg cell worthy of full protection, from the moment of conception perceiving a human being which merely has to mature (a developing human being), the advocates of Position 2 assume that the fertilized egg cell first *has to become a human being* (a human being in the making) and that the level of protection due to it gradually increases as it does so.

The ethical debate has seen different stages of embryonic development being put forward as meriting an increased level of embryo protection, that is, the point where responsible research has to stop. Some see *nidation*, that is, the implanting of the fertilized egg cell in the womb, as the point after which interventions for research purposes can no longer be justified if ultimately leading to the death of the embryo. These people argue that nidation marks the start of the bond to the mother that is the prerequisite for development into a human being capable of survival. This position is not only held by some philosophers and biologists, but also is found in some religions, for example Islam.

Others have argued for the point of increased protection being set when twins are no longer a possibility and individuation has thus definitely begun; for still others the deciding criterion is the formation of neuronal structures and thus the presumed emergence of sensibility. Each of these cut-off points stems from a particular view of humanity, and yet they all share the basic assumption, often coupled with references to personal existence, that the protection due to human life increases *in stages*. Precisely because this development is a continual process, they believe it necessary to divide it up into stages in order to determine the moral status of each phase.

V. CONCLUSION

These two competing positions cannot ultimately be united. As with other conflicts, such as the debate about brain death, here too the bane of modern ethics rears its ugly head. Just as the brain-dead can be perceived by so called

"globalists" as *living* beings without brain functions or by the "analytical particularists" as *dead* beings with a functioning organism, two fundamentally different and incommensurable views emerge in the debate surrounding stem cell research.

Whereas advocates of Group 1 (protection of life from the start) could only agree to stem cell research on cells from umbilical cord blood or adults, advocates of the (extremely heterogenous) Group 2 (protection of life in stages) can go further and have no fundamental objections to research on surplus embryos from IVF treatments. The philosophical and theological debate in Europe shows that the question of the status of the embryo is an unavoidable element in the make-up of the problem of stem cell research, but not in providing a decisive solution to it (Anselm et al., 2004).

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